

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,

Plaintiff,

versus

JUAN OLAYA,

Defendants.

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§CRIMINAL ACTION H-91-58-02
(ANCILLARY CIVIL ACTION H-08-3075)

Opinion on Remand

This Court denied Petitioner's motion under 28 U.S.C. § 2255. The Court of Appeals remanded to this Court for findings and conclusions of law on the denial of relief on Olaya's claims of ineffective assistance of counsel. Olaya contends he received ineffective assistance of counsel at trial and on appeal. He claims his attorney was ineffective because he:

1. failed to obtain discovery material and investigate,
2. failed to inform Olaya about a "possible plea proffer,"
3. failed to instruct the jury that a mere buyer-seller relationship would not establish membership in a drug conspiracy,
4. failed to put the government to its proof because he made few objections and conducted minimal cross-examination,
5. failed adequately to preserve error when a juror saw Olaya in shackles,
6. failed to instruct the jury on the buyer-seller relationship for sentencing purposes, and
7. failed to raise on appeal (a) an unreasonable sentence, (b) ineffective assistance of trial counsel, and (c) trial court abuse of discretion under Rule 32.

Many of Olaya's contentions are speculative, including his claims on discovery and a plea-bargain offer. Olaya does not show ineffective assistance of counsel because he does not show how any of counsel's claimed deficiencies prejudiced his defense at trial or on appeal. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). He does not show that any of "counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Id.*, at 691. Olaya fails to show that because of his attorney's claimed errors, there is a reasonable probability that the

result of the trial or appeal would have been different and that counsel's deficient performance rendered the proceedings unfair. *Lockhart v. Fretwell*, 506 U.S. 364, 369-70 (1993).

Signed Feb. 18, 2010, at Houston, Texas.

A handwritten signature in black ink, appearing to read 'Lynn N. Hughes', written over a horizontal line.

Lynn N. Hughes
United States District Judge